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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/737,179	12/13/2000	Tahir Sadik Khan	LIPE-016	8410

7590 11-05/2003  
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EXAMINER

ALEXANDER, LYLE

ART UNIT PAPER NUMBER

1743

DATE MAILED: 11/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/737,179

Applicant(s)

KHAN ET AL.

Examiner

Lyle A Alexander

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 September 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7, 9-11, 13, 14, 16, 18-21 and 23-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-11, 13-14, 16, 18-21 and 23-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-7,9-11,13-14,16,18-21,23 and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kloepper in view of Henschen et al.

The original claim language of "interdigitating" encompasses the new language of "oppositely oriented" because an interdigitating pattern must have opposite orientations. The art below teaching interdigitating patterns also encompass the new limitation of oppositely oriented.

Kloepper teaches making a blood test strip that can detect glucose (see col. 11 line 44). Figure 11 demonstrates how the test strips are cut out of a precursor comprising an elongated support material. Kloepper is silent to the claimed interdigitating pattern of the precursor on the test strip.

Henschen et al. teaches in column 9 lines 4+ that two interdigitated rows of electrodes are advantageous because it save the amount of metal required when compared to a single row of terminals.

It would have been within the skill of the art to modify Kloepper in view of Henschen et al. and use an interdigitating pattern when outlining the test devices on the precursor to gain the above advantages of requiring less material and a lower production cost.

The modified method of Kloepper is silent to the claimed aspect ratio of 0.5 and a lance.

The court decided In re Boesch 205 USPQ 215 that optimization of a result effective variable is ordinarily within the skill of the art. A result effective variable is one that has predictable and well-known results. The relative dimension of the test device are a result effective variable based upon the desired application and marketing requirements. Also, the use of a standard solution and a lance for drawing a blood sample are result effective variable having the expected and well known function of providing standardization and drawing blood.

It would have been within the skill of the art to further modify Kloepper to have a sample application region with an aspect ratio of 0.5 as optimization of a result effective variable based upon the desired application and marketing specifications. Additionally, one would further modify Kloepper and supply a standard solution and lance to gain the advantage of having means to standardize and draw a blood sample as optimization of a result effective variable.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kloepper  
Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kloepper in view of Henschen et al. as applied to claims 1-7,9-11,13-14,16,18-21,23 and 25-27 above, and further in view of Garcia et al.

Kloepper in view of Henschen et al. is silent to the claimed lance.

Garcia et al. teach it is desirable to supply a lance with a blood test kit so that a sample can be safely and comfort drawn.

It would have been within the skill of the art to further modify Kloepper in view of Garcia et al. and supply a lance to gain the above advantages.

***Response to Arguments***

Applicant's arguments filed 9/10/03 have been fully considered but they are not persuasive.

The Office acknowledges that claim 18 is pending. A typographical error was made by not including reference to claim number 18 in the last office action. It is noted the claims dependent from 18 were addressed and inherently the limitations of claim 18 were also considered. The Office regrets any inconvenience this typographical error may have caused Applicants.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicants' state Kloepper fails to teach an interdigitating pattern. The Office has not used this reference to teach this aspect of the invention, but rather Henschen et al.

Applicants state Henschen et al. fail to teach an interdigitating pattern. The Office directs Applicants to col. 9 lines 10+ where Henschen et al. teach an interdigitating pattern.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A Alexander whose telephone number is 703-308-3893. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 703-308-4037. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.



Lyle A Alexander  
Primary Examiner  
Art Unit 1743

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